SINGLE BENCH (A) (4)

CF 1002

IN THE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTISGARH

WRIT PETITION (C) NO. 5781 **/2006**

Dinesh Joshi,
S/o- Avadhut Joshi,
Aged about 66 years,
R/o- Prasad and Company, Mahka,
P.S. & Tehsil – Kharsia, Raigarh,
Distt. Raigarh,
Chhattisgarh **Petitioner/Defendant No.2**

VERSUS

P.R. No. 5806/06
Present - Pankaj Shrivastava
dated 17/10/06

1. Arun Kumar,
Aged about 38 years,
S/o-Shyamsingh,
Caste – Gabel, Occupation- Agriculture,
R/o- Village – Arjuni, P.S. Shakti,
Tehsil – Sakti, Distt. Janjgir-Champa,
Chhattisgarh. **Respondent/Plaintiff**

2. D. Shriniwas, S/o- Ramkrishan,
P.O. Mukteshwar, P.S. Amlapuram,
Distt. Eastgodawari, (Andhra Pradesh),
Present Adress – Prasad & Company, Mahka,
P.S. & Tehsil – Kharsia, Distt. Raigarh,
Chhattisgarh. **Respondent/Defendant No.1**

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3. Uwasa Verma (E.D.), Executive Director,
Prasad & Company Power House Conversing,
Vig, N.T.P.C., P.S. Jamnipali, Distt. Korba,
Chhattisgarh. **Respondent/Defendant No.3**

4. Prasad Raju, Managing Director,
Prasad & Company Ltd. 6-3-87,
Snehlata Green Land Road, Begam Paid,
Haidarabad, (A.P.) **Respondent/Defendant No. 4**

OATH COMMISSIONER
APARNA MALVIYA
Bilaspur Chhattisgarh

5. Govt. of C.G.,
Through – Collector,
Janjgir – Champa, Distt. Janjgir –Champa,
Chhattisgarh. **Respondent/Defendant No.5**

Respondent No. 2 to 5 are Formal party

(#5)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT IN THE NATURE OF MANDAMUS, CERTIORARI ETC.

AFR

(34)

High court of Chhattisgarh, Bilaspur

Writ Petition(C) No.5781/2006

Dinesh Joshi

Vs.

Arun Kumar and others

Appearance:

Shri Pankaj Shrivastava, counsel for the petitioner.

ORAL ORDER
(12.1.2007)

SUNIL KUMAR SINHA, J

(1) By way of this writ petition filed under Article 227 of the Constitution of India, the petitioner has challenged the legality, propriety and validity of the order dated 20.9.2006, passed in C.S.No. 04-B/2005 by the Additional District Judge- Shakti. By the said order, the learned Additional District Judge has dismissed an application filed by the petitioner/defendant No.2 under Section 151 of the Code of Civil Procedure along with the written statement and the document, which was filed for permission to take the written statement on record after expiration of the statutory period granted under Order VIII , Rule 1 C.P.C. and further after passing of an order by the trial Court on 26.4.2006, by which, a right to file written statement by this defendant was closed by the trial Court under the provisions of Order VIII, Rule 1 C.P.C.

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(2) Learned counsel for the petitioner argues that admittedly, this petitioner/defendant No.2 was served in the aforesaid Civil suit No. 4-B/2005 on 17.8.2005 and his counsel has filed Vakalatnama and registered address on behalf of this defendant on 24.8.2005 and he had to file his written statement according to the provisions of Order VIII, Rule 1 C.P.C. within a period of 30 days and further within the extended period of 90 days by the Court, but he could not do so, on account of certain difficulties, which were mentioned in the application filed under Section 151 C.P.C. and the trial Court without properly adverting to the provisions of law and without looking to the difficulties, pleaded by defendant No.2 as a cause for not filing the written statement in time, dismissed the said application and fixed the case for plaintiff's evidence on 5.10.2006. It is stated that other defendants i.e. defendant Nos. 1, 3 and 4 were already proceeded ex-parte and defendant No.5 had also not filed the written statement, therefore, the matter was fixed for evidence by the trial Court.

(3) A perusal of the impugned order would show that it was a suit for damages filed by the plaintiff, in which, the plaintiff has claimed a sum of Rs.1,61,292/- against the defendants and in the said suit the only contesting defendant i.e. defendant No.2 was denied to file the written statement on account of closure of his right under Order VIII, Rule 1 C.P.C.

(4) Learned counsel for the petitioner argues that the order passed by the trial Court is not in accordance with the provisions of Order VIII, Rule 1 C.P.C. and the trial Court, for the reasons stated in the application filed under Section 151 C.P.C., would have granted an opportunity to the petitioner and would have accepted

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the written statement on record, which was filed by the petitioner along with an application under Section 151 C.P.C. He refers to the aforesaid provisions and also to the decision of the Apex Court rendered in the matter of ***Kailash Vs. Nanhku and others***, reported in ***(2005) 4 Supreme Court Cases 480*** .

(5) I have heard learned counsel for the petitioner at length and have also perused the records of the writ petition.

(6) Order VIII, Rule 1 C.P.C. provides for the provisions relating to filing of the written statement. It provides that the defendant shall, within 30 days from the date of service of summons on him, present a written statement of his defence. A proviso has also been added to this rule, which says that where the defendant fails to file the written statement within the said period of 30 days, he shall be allowed to file the same on such other date, as may be specified by the Court for the reasons to be recorded in writing, but it shall not be later than 90 days from the date of service of summons. This point was considered by the Apex Court in the aforesaid decision and vide para 27, the Apex Court held that 3 things are clear from the above provisions:

> (i) Firstly, a careful reading of the language in which Order 8, Rule 1 has been drafted, shows that it casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the Court and also does not specifically take away the power of the Court to take the written statement on record though filed beyond the time as provided for.
>
> (ii) Secondly, the nature of the provision contain in Order 8 Rule 1 is procedural. It is not a part of the substantive law.
>
> (iii) Thirdly, the object behind substituting Order 8 Rule 1 in the present shape is to curve the

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> mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases much to the chagrin of the plaintiffs and petitioners approaching the Court for quick relief and also to the serious inconvenience of the Court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. The process of justice may be speeded up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried.

(7) Para 28 of the aforesaid judgment says that all the rules of procedure are the handmaid of justice. The language implied by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of C.P.C. or any other procedural enactment ought not to be construed in a manner which would leave the Court helpless to meet extra ordinary situations in the ends of justice. The Apex Court also quoted the observations made by Krishna Iyer J. in ***Sushil Kumar Sen Vs. State of Bihar (1975) 1 SCC 774*** as follows:

> *"The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.*
>
> *The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. .... Justice is the goal of jurisprudence – processual, as much as substantive."*

(8) The aforesaid law laid down by the Apex Court and the provisions of Order VIII Rule 1 clearly show that the mandate

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sculptured by the architects of the law nowhere curtails the powers of the Court to exercise jurisdiction in appropriate cases by granting reasonable time to file written statement even beyond the period of 30 days or the extended period of 90 days as is envisaged in Order VIII Rule 1 C.P.C. Since the nature of provisions contained in Order VIII Rule 1 C.P.C. is procedural, it is well within the power of the Court to exercise such jurisdiction in the appropriate matters when the same is required to meet the ends of justice. It is always inherent with the Court to act and exercise its jurisdiction for advancement of justice keeping in mind the object behind the law, subject to the expressed and employed provisions creating bar regarding exercise of such jurisdiction, as the guiding factor.

(9) In the present case, the trial Court, without properly adverting to the provisions of Order VIII Rule 1 C.P.C. i.e. without considering the grounds raised by the petitioner for not filing the written statement in time, has passed the impugned order only on the ground that the direction contained in the provisions of Order VIII Rue 1 C.P.C. was not followed by the petitioner and his right to file the written statement goes with the time limit prescribed by the aforesaid provisions.

(10) On the basis of aforesaid enunciation of the Apex Court and in view of the provisions contained in Order VIII Rule 1 C.P.C., the impugned order passed by the trial Court, cannot be sustained as the trial Court has completely lost sight of the fact that the matter was at the preliminary stage and the petitioner/defendant No.2, who was the only contesting defendant has set-forth

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reasonable grounds for explaining the delay in filing the written statement. The trial court ought to have admitted the written statement on record and then it would have proceeded in the trial in accordance with law. The trial court would have considered that the prayer seeking time beyond 90 days for filling the written statement was made in writing and in such situation; considering the points raised, it would have admitted the written statement by extending the time, which was not done.

(11) In view of the above, the petition is allowed. The impugned order passed by the trial Court is set aside on the condition that the defendant No.2/petitioner shall pay to the plaintiff a sum of Rs.1000/- as the cost for causing delay in filing the written statement and on paying/depositing with the trial Court such cost only, within a period of 3 weeks from today, the written statement filed by the defendant shall be admitted on record.

(12) It is made clear that this order has been passed ex-parte without hearing the opposite side, therefore, if the opposite party feels aggrieved against the order in any manner, it shall be open for them to agitate their grievance before this Court by taking appropriate action under the provisions of law.

(13) The petition is allowed to the extent indicated above. It is finally disposed of.

(14) No costs.

Sd/-
Sunil Kumar Sinha
Judge

/Sunita/